

## COUNTY OF LINCOLN

### New Mexico Special Meeting Board of County Commissioners

Preston Stone, Chair  
Dallas Draper, Vice Chair

Thomas F. Stewart, Member  
Elaine Allen, Member  
Lynn Willard, Member

### Minutes Wednesday August 10, 2016

Minutes of the Special Meeting of the Lincoln County Commission held at 1:00 P.M. on August 10, 2016 in the County Commission Chambers, Lincoln County Courthouse, in Carrizozo, New Mexico.

#### 1. Call to Order

Vice Chair Draper called the Special Meeting of the Board of County Commissioners to order at 1:02 PM.

#### 2. Roll Call

##### Roll Call.

**Present:** Commissioner Stewart, Commissioner Allen, Commissioner Draper, Commissioner Willard (participating telephonically).

**Absent:** Chair Stone.

Others present included Nita Taylor, County Manager; Alan Morel, County Attorney; and Whitney Whittaker County Chief Deputy Clerk.

#### 3. Invocation

The invocation was presented by Pastor Hayden Smith.

#### 4. Pledge of Allegiance

- a. Pledge – US Flag
- b. Salute – NM Flag

#### 5. Approval of Agenda

**Motion:** Acceptance of the Agenda and authorized the Chair to move items as necessary;

**Action:** Approve, **Moved by** Commissioner Stewart, **Seconded by** Commissioner Allen.

**Vote:** Motion carried by unanimous vote (summary: Yes = 4).

**Yes:** Commissioner Allen, Commissioner Draper, Commissioner Stewart, Commissioner Willard.

**Absent:** Chair Stone

#### 6. Executive Session Pursuant to the Open Meetings Act: Discussion of all Threatened and/or Pending Litigation Section 10-15-1, Sub-Paragraph H.(7); and Discussion of the purchase, acquisition or disposal of real property or water rights by the public body, Section 10-15-1, Sub-Paragraph H.(8).

**Motion:** To close the meeting for the purposes of an Executive Session to discuss Threatened and/or Pending Litigation pursuant to the Open Meetings Act, Section 10-15-1, Sub Paragraph H.(7) and the purchase, acquisition or disposal of real property or water rights by the public body, Section 10-15-1, Sub-Paragraph H.(8) (Lincoln County Medical Center) and as follows:

New or Updated Matters since last report \*

1. \*Cooper, Gale and DeBaca County News v. County of Lincoln, Sheriff of Lincoln County, et al. D-1329-CV-2007-01364. Suit filed: October 15, 2007. Verified Complaint for Declaratory Judgment Ordering Production of Certain Records and Information. Hearing took place Dec. 18, 2013, and Stipulated Judgment was entered June 4, 2014 in favor of Ms. Cooper. Ms. Cooper

filed an appeal June 10, 2014, and Judge John F. Davis was assigned Aug. 3, 2014. Joint Answer Brief of Defendants-Appellees' Steven Sederwall and Rick Virden with Request for Oral Argument filed in the Court of Appeals Sept. 28, 2015. Case was submitted to a panel of three judges for decision on February 1, 2016. Memorandum Opinion was filed March 23, 2016 affirming the district court's determination that statutory damages are not available and vacating \$100,000 punitive damages and attorney fee awards. Order filed April 12, 2016 granting Plaintiff's Motion to Extend Time to File Petition for Writ of Certiorari to May 31, 2016. Plaintiff-Appellant Gale Cooper's Petition for Writ of Certiorari filed with the New Mexico Supreme Court May 31, 2016. Defendants' Response In Opposition to Petition for Writ of Certiorari filed June 15, 2016 in the New Mexico Supreme Court. Order Denying Plaintiff's Petition for Writ of Certiorari entered on June 22, 2016. Plaintiff filed her Motion for Reconsideration and Rehearing on July 8, 2016. Order Denying Motion for Reconsideration and Hearing was filed July 20, 2016.

2. *Water Rights Protests: New Mexico State Engineer Hearing Numbers: 14-039 and 14-041.* Protests of Applications 01300-1, 01300-2, 01300-3, 0826-2 into 0275 *et. al.* and H-272 *et al* (T) and H-50-1 into H-272 *et. al.* (T) filed July 15, 2013 pertaining to movement / transfer of water rights from the Hondo Valley to the Village of Ruidoso and the City of Ruidoso Downs. Docketing Order filed Sept. 18, 2014. Kelly Cassels/Sanders, Bruin, Coll & Worley, P.A. has been retained by the County, entered his appearance Sept. 22, 2014 and has responded in behalf of the County.

3. *Wesmax, Ltd. V. Paul Baca, Lincoln County Assessor D-1226-CV-2014-00188* Appeal of the Final Order from Lincoln County Valuation Protest Board. Appeal filed Oct. 8, 2014. Case assigned to Basham & Basham/Dwyer. Record of Appeal and Transcript of Proceedings was filed Oct. 23, 2014.

4. *\*A. Preston, DeAnna v. County of Lincoln, Sheriff Robert Shepperd, Et. Seq. D-1226-CV-2015-00112* Notice of Appeal of Post Disciplinary Hearing filed June 10, 2015. Amended Complaint alleging Civil Rights Violation and Gender Based Discrimination filed on Oct. 13, 2015. Removed to Federal Court Nov. 12, 2015. Amended Complaint Appealing the Adverse Administrative Decision filed May 9, 2016 by Mr. Beauvais. Defendant's Notice of Filing Petition for Removal filed May 19, 2016.

*B. Preston, DeAnna v. County of Lincoln, Sheriff Robert Shepperd, Et Seq In the United States District Court For The District of New Mexico 2:15-cv-01029.* Defendants County of Lincoln and Sheriff Robert Shepperd's Motion to Dismiss entered November 19, 2015. Order Dismissing Without Prejudice entered by Judge Stephan Vidmar April 19, 2016. Amended Complaint Civil Rights Violation filed May 6, 2016 by Mr. Beauvais.

5. *Orlando Montes v. Pinnacle Propane, LLC, Allen Sultermeier, County of Lincoln , Lincoln County Fair Association, John Does; D-1226-CV-2016-00006* United States District Court for the District of New Mexico 2:16-cv-126. Complaint for Wrongful Death, Statutory Tort, Violation of Constitutional Rights (Due Process), Negligence Per Se: Loss of Consortium, Negligent Infliction of Emotional Distress filed with the 12<sup>th</sup> Judicial District Court Jan. 19, 2016. Incident occurred at Lincoln County Fairgrounds July 2, 2015. County was served with Complaint on January 25, 2016. The case was removed to Federal Court Feb. 22, 2016. County of Lincoln's Answer to Complaint filed February 29, 2016.

6. *Walter Ray Seidel / Brian Ray Seidel v. Anthony Manfredi, Lincoln County Sheriff Department M-32-CV-2016-00036* Civil Complaint filed March 9, 2016 alleging personal and property damage. County of Lincoln's Answer to Civil complaint filed March 29, 2016.

7. *State of N.M. (NMDOT) v. Neria, et al D-1226-CV-2002-00129* Complaint for Condemnation filed June 10, 2002 by the New Mexico Department of Transportation requesting a Court Order granting NMDOT the fee simple title to certain real property as is necessary for "highway purposes." Order of Dismissal for Lack of Prosecution was entered July 5, 2005. NMDOT submitted a proposed Motion to Vacate Order of Dismissal and Reinstate Case on May 4, 2016 which was not opposed.

8. *Sean McGarry v. Board of County Commissioners, Lincoln County Sheriff's Department, Deputy Mike Wood, Deputy Jason Green, Deputy David Hightower in their individual capacities and as employees of the Lincoln County Sheriff's Department in the United States District Court for the District of New Mexico 2:16-cv-00483 GBW GJF* Complaint for damages resulting from the excessive use of force, false arrest, assault and battery, malicious prosecution and false imprisonment of Plaintiff by Defendants. Complaint filed May 26, 2016.

9. *Property Owners' Committee of Rancho Ruidoso Valley Estates, Inc., Plaintiff v. Y'Hoshua Cohen and NM Dept. of Workforce Solutions, Defendants v. Property Owners' Committee of Rancho Ruidoso Valley Estates, Inc. et. al. and Lincoln County Solid Waste Authority, Third Party Defendants: D 1226-Cv-2015-00217.* Summons improperly served on Lincoln County June 16, 2016, which was for Lincoln County Solid Waste Authority, also known as Greentree Solid Waste Authority.

10. *\*Deann S. Rauch, F.K/A. Deann S. Kessler v. The County of Lincoln, Keith Kessler, et. al. D 1226 CV 2016 00148* Complaint to Quiet Title filed July 13, 2016. County of Lincoln was served July 28, 2016.

Lincoln County Ordinance Violations:

Alan P. Morel: 12<sup>th</sup> Judicial District Attorney's Office  
Special Prosecutor

11. State of NM v. Blaylock, Gregory M-30-MR-2016-00016 Violation of County Ordinance 2014-04: Contraband at Lincoln County Detention Center. Non-Traffic citation was filed in Carrizozo Magistrate Court on February 10, 2016. A misdemeanor arraignment took place February 12, 2016 when the Defendant pled "Not Guilty." Defendant represented by Public Defender's office. Pre Trial Hearing was scheduled for March 29, 2016 but due to Defendant's automobile accident March 28, a reset was scheduled for April 12, 2016 at which time Defendant failed to appear. A Bench Warrant has been issued by the court for failure to appear. A Pre-Trial Hearing is scheduled June 7, 2016 at 9 a.m. on a trailing docket before Judge Mickie Vega. Defendant failed to appear and a Bench Warrant was issued June 7, 2016. A Pre-Trial Hearing is scheduled for Tuesday, August 9, 2016 at 9:00 a.m. on a Trailing Docket before Judge Mickie L. Vega.

12. \*State of NM v. Marmolejo, Noe: case number not assigned as of June 21, 2016) Violation of County Ordinance 2008-08: Animals running at large. Non-Traffic citation was filed in Ruidoso Magistrate Court by Sheriff's Sgt. Beard June 17, 2016. Arraignment occurred July 25 at which time the Defendant pled "No Contest" and was found Guilty, received a deferred sentence subject to 90 days unsupervised probation and court costs in the sum of \$73.

13. \*State of NM v. Widener, Randel M-30-MR-2016-00080 Violation of County Ordinance 2004-05: Unauthorized Structure in Lincoln. Non-Traffic citation was issued by LCSO Sgt. Warren on June 15, 2016 with a court appearance date before Judge Mickie Vega on or by June 30, 2016 at 10:00 a.m. An Entry of Appearance and Plea of Not Guilty was filed by Attorney Alexandra Bobbit on June 23, 2016. A Pre-Trial Hearing was scheduled for July 26, 2016 and was reset for August 30, 2016 at 9 a.m. on a Trailing Docket before Judge Vega.

14. \*State of NM v. Mendoza, Aimee M-30-MR-2016-00077 Violation of County Ordinance 2008-08: Animals running at large. Non-Traffic citation was issued by Sheriff's Sgt. Warren June 12, 2016 with a request for a Court-issued Summons to the Defendant. An Arraignment Hearing before Judge Mickie Vega was scheduled July 13, 2016 at which time the Defendant pled "Not Guilty." A Pre-Trial Hearing is scheduled for Tuesday, August 30, 2016 at 9 a.m. on a Trailing Docket before Judge Vega.

15. \*State of NM v. Nava, Gabriel M-30-MR-2016-00081 Violation of County Ordinance 2014-04 Prohibited Contraband in Lincoln County Detention Center. Non-Traffic citation was issued by Sheriff's Stg. Warren June 13, 2016. A Misdemeanor Arraignment took place June 20, 2016 at which time Defendant pled "Not Guilty." A resolution was not reached at the July 26, 2016 Pre-Trial Hearing and a Trial is now scheduled for August 30, 2016 at 2 p.m. before Judge Vega.

16. \*State of NM v. Gunkel, Ronnie M-30-MR-2016-00095 Violation of County Ordinance 2014-04 Prohibited Contraband in Lincoln County Detention Center. Criminal Complaint was filed July 26, 2016. A Misdemeanor Arraignment took place July 27, 2016 before Judge Mickie L. Vega at which time the Defendant pled "No Contest" and was found "Guilty." Sentencing Hearing is scheduled to take place August 16, 2016 at 9 a.m. on a Trailing Docket before Judge Vega.

**Tort Claims Notices Received or Threatened**

**2016**

**Rains, Bonnie** – Tort Claim Notice received January 18, 2016 alleging failure of the County of Lincoln to maintain road surfaces during snow or ice conditions.

**Brazel, Stephanie** – Tort Claim Notice received January 20, 2016 alleging injuries incurred due to Claimant stepping in an alleged uncovered water meter hole at 2801 Sudderth Drive, Ruidoso, NM.

**\*William Gayford – Roger Linfoot** – Tort Claim Notice received February 17, 2016 from Attorney W. Chris Nedbalek alleging 4<sup>th</sup> and 14<sup>th</sup> Amendments violations and "possibly other constitutional, statutory, regulatory, legal or equitable rights not specifically named."

**Hill, Walter** – Tort Claim Notice received March 8, 2016 via emailed correspondence from Mr. Hill alleging the unlawful disclosure of confidential information from Mr. Hill's Lincoln County personnel file.

**Sonora Corporation (John Russell-CEO)**-Tort Claim Notice received April 6, 2016 via correspondence from Mr. Russell in response to a Notice of Investigation from NM Construction Industries Division due to an alleged lack of final inspection and deviation from approved plans of construction in 2012 at 119 Bald Eagle Court, Alto, NM.

**Jaramillo, Monica** – Tort Claim Notice received April 8, 2016 alleging Lincoln County road department employee in the performance of his road grading duties damaged Ms. Jaramillo's vehicle.



**Wagoner, John** – Tort Claim Notice received April 12, 2016 via telephone call to Mr. Morel's office when Mr. Wagner threatened suit against Lincoln County with respect to alleged accumulation of garbage at property on Highway 70.  
**Steward, Tynell** – Tort Claim Notice received April 18, 2016 alleging abuse while incarcerated in Lincoln County Detention Center.

**Coleman, Chad** – Tort Claim Notice received April 25, 2016 alleging warrantless search and seizure and malicious prosecution.

**Parsons-Williams, Karen** – Tort Claim Notice received June 2, 2016 alleging negligent or malicious medical procedure performed at Lincoln County Medical Center on March 9, 2016.

## **2015**

**Cherry, Doris** – Tort Claim Notice posted in Lincoln County News Jan. 1, 2015 stating possible Civil Rights Violation lawsuits regarding alleged Americans with Disabilities Act non-compliance in remodeling the Lincoln County Courthouse buildings.

**McDaniel, Carl** – Tort Claim Notice received Jan. 23, 2015 from Attorney John Sugg alleging violation of the Unfair Trade Practices Act and engaging in unfair or deceptive trade practices and/or unconscionable trade practices by GSWA.

**Sehorn, Sean M.** – Tort claim Notice received March 2, 2015 from Attorney Gary Mitchell alleging Lincoln County Detention Center failed to provide adequate medical treatment during inmate Sehorn's incarceration.

**Lavin, Erica L. and Rathgeber, Jack** – Tort Claim Notice received March 2, 2015 from Attorney Gary Mitchell alleging Constitutional Rights were violated resulting in wrongful termination.

**Hanley, Constance** – Tort Claim Notice received March 20, 2015 from Attorney John Sugg alleging violations of 42 USC section 1983, malicious prosecution, failure to investigate, defamation of character, libel and abuse of process.

**Capitan Iron Mine through A. Blair Dunn** – Threatened Litigation on April 1, 2015 against the County of Lincoln should Lincoln County require Capitan Iron Mine comply with Lincoln County Mine Ordinance 2009-01.

**Chavez, Billy** – Ordinance Violation: 2009-03 Regulating Refuse, Solid Waste and Litter in the County. March 10, 2015 certified letter mailed to Mr. Chavez giving him 30 days to dispose of debris on his property at 142 White Cat Road, San Patricio (Section 26, Township-10S, Range 16E, tract of land lying in the NE 4SE4). April 10, 2015 the property was inspected and noted no progress had been made.

**Culp, Susan v. LCMC/Lincoln County**: Tort Claim Notice received May 4, 2015 from Attorney Katherine Channing Roehl/Roehl Law Firm alleging medical malpractice, negligent supervision, negligent credentialing by staff, administrators and doctors at LCMC on or about March 3, 2015 during Ms. Culp's gall bladder removal surgery.

**Reyes, Roberto** – Tort Claim Notice received May 15, 2015 from Attorney Timothy White/Valdez White Law Firm alleging illegal seizure, illegal search, illegal imprisonment and wrongful conduct of the Lincoln County Sheriff's Department.

**Torres, Leopoldo**: Tort Claim Notice received June 4, 2015 from inmate Torres alleging inmate-initiated attack on inmate Torres at Lincoln County Detention Center.

**Wallace, Stephen**: Tort Claim Notice received June 11, 2015 from Attorney Gary Mitchell alleging deprivation of Constitutional rights due to false incarceration at Lincoln County Detention Center without proceeding with a timely extradition.

**Rodriguez, Victor** – Tort Claim Notice received July 13, 2015 from Attorney W. Chris Nedbalek alleging hostile treatment from fellow employees while employed at Lincoln County Detention Center.

**Prudencio, Fabian and Corinne** – Tort Claim Notice received July 24, 2015 from Attorney Daniel P. Ulibarri alleging negligence, personal injury, spoliation, indemnification and property damage against the County of Lincoln.

**Yates, Barbara** – Verbal Threat against the County issued July 21, 2015 due to ongoing flooding at her private property.

**Davis, Jack and Rema** – Verbal Threat against the County issued July 21, 2015 due to ongoing flooding at their private property.

**Capitan Iron Mine** – Tort Claim Notice received Sept. 24, 2014 via email from A. Blair Dunn, alleging County trespass on private property.

**L. Phillip Onsrud** – Tort Claim Notice received Nov. 3, 2015 via email alleging lack of medical care while incarcerated in Lincoln County Detention Center.

**Brown, Shelly** – Tort Claim Notice received December 31, 2015 alleged failure of the County of Lincoln to maintain road surfaces during snow or ice conditions.

## **2014**

**Ogden, John D** – Tort Claim Notice received May 26, 2014 alleging mistreatment while incarcerated at Lincoln County Detention Center on March 11, 2014.

**Rounds, Christopher** – Tort Claim Notice received June 4, 2014 alleging being held in Lincoln County Detention Center without being advised of his charges.

**Herbert, Crystal** – Tort Claim Notice received June 23, 2014 from Attorney Matthew Coyte/Coyte Law alleging false imprisonment, due process violations, unlawful detention of a minor, emotional distress.

**Class Action** – Tort Claim Notice received June 23, 2014 from Attorney Ryan Villa/Cooper Law Firm alleging false imprisonment, false arrest, deprivation of rights at Lincoln County Detention Center that arise with Immigration and Customs Enforcement charges.

**Atwell, Stacey** – Tort Claim Notice received June 25, 2014 alleging unlawful seizure of her two minor children during a request for a deputy to assist in keeping the peace.

**Ramos, Aaron** – Tort Claim Notice received August 7, 2014 alleging lack of Due Process for inmates at Lincoln County Detention Center.

**Lambert, David and Bonnie** - Tort Claim Notice received Sept. 8, 2014 from Attorney W. Chris Nedbalek alleging damage to Lambert property due to Mr. Rodney Bunsen using his own equipment to alter a platted County right of way without the authorization or knowledge of the County.

**Caughron, Brittany and Anderson, Amie** – Tort Claim Notice received Oct. 24, 2014 by Attorney W. Chris Nedbalek alleging overcrowding of Lincoln County Detention Center as a violation of 8<sup>th</sup> Amendment Rights.

**Ryen, Allen**- Tort Claim Notice received Oct. 27, 2014 by Attorney W. Chris Nedbalek alleging Mr. Ryen was exposed to unsanitary conditions at Lincoln County Detention Center.

**Inmate Group** – Tort Claim Notice received Oct. 27, 2014 by Attorney W. Chris Nedbalek alleging overcrowding and unsanitary conditions at Lincoln County Detention Center.

**Caughron, Brittany and Anderson, Amie** – Tort Claim Notice received Nov. 14, 2014 by attorney W. Chris Nedbalek alleging inadequate medical care and overcrowding at Lincoln County Detention Center.

**Inmate Group** – Tort Claim Notice received Nov. 14, 2014 by attorney W. Chris Nedbalek alleging overcrowding and unsanitary conditions at Lincoln County Detention Center.

**Long, Cameron** – Tort Claim Notice received Nov. 14, 2014 by attorney W. Chris Nedbalek alleging mistreatment by an Officer with Adult Probation and Parole.

**McClarnon, Brian** – Tort Claim Notice received Nov. 14, 2014 by attorney W. Chris Nedbalek alleging violations of U.S. Constitutional Amendment rights.

**Diana Martwick, 12<sup>th</sup> Judicial District Attorney** – Tort Claim Notice received Nov. 25, 2014 alleging lack of adequate office space provided by the County of Lincoln.

**Inmate Group** – Tort Claim Notice received Dec. 22, 2014 by attorney W. Chris Nedbalek alleging inmates were mistreated at Lincoln County Detention Center.

## **2013**

**Harrisburg Documents**- Attempts to recover Lincoln County documents illegally taken from the County. County Clerk Rhonda Burrows has been in contact with Harrisburg, PA in recovery efforts.

**Action:** Approve, **Moved** by Commissioner Stewart, **Seconded** by Commissioner Draper.

**Vote:** Motion carried by unanimous roll call vote (**summary:** Yes = 4).

**Yes:** Commissioner Stewart, Commissioner Allen, Commissioner Draper, Commissioner Willard.

**Absent:** Chair Stone

Vice Chair Draper recessed the Regular Meeting and convened the Closed Session at 1:05 PM.

Vice Chair Draper reported Chair Stone joined the Regular Meeting and Executive Session at 1:10 PM.

Chair Stone adjourned the Closed Session and reconvened the Regular Meeting at 5:50 PM.

Commissioner Stewart attested that matters discussed in the closed meeting were limited to those specified in the motion for closure or in the notice of separate closed meeting.

## **7. Next meetings:**


August 16, 2016 - Regular Commission Meeting

## **8. Adjourn**

There being no further business to come before the Board of County Commissioners, Chair Stone adjourned the meeting at 5:50 PM.

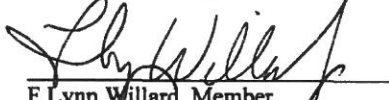
County of Lincoln  
Board of County Commissioners

  
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F Lynn Willard, Member

ATTEST:

  
Rhonda Burrows, County Clerk

September 27, 2016  
Date Approved

